

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMANICK KURT GRAVES,

Defendant-Appellant.

UNPUBLISHED

March 20, 2014

No. 312593

Oakland Circuit Court

LC No. 2012-239819-FC

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83, felonious assault, MCL 750.82, two counts of possession of a firearm in the commission of a felony (felony-firearm), MCL 750.227b, two counts of carrying a concealed weapon, MCL 750.227, third degree fleeing and eluding, MCL 257.602a(3), and brandishing a firearm in public, MCL 750.234e. Defendant was sentenced to 19 to 40 years for assault with intent to murder, two years for each felony-firearm conviction, two to four years for felonious assault, two to five years for each conviction of carrying a concealed weapon, two to five years for fleeing and eluding, and 90 days for brandishing a firearm in public. He appeals as of right. We affirm.

Defendant engaged in a verbal altercation at a convenience store with James Beetle and brothers, Travis and Mitchell Blair. The altercation concerned a DVD that defendant had taken from Travis. After James and Travis exited the store, defendant brandished a weapon toward Mitchell. Defendant followed the victims' vehicle for several blocks during which he pulled alongside their car and waived a pistol. Later, as one of the victims was on the phone with 911, defendant fired at their vehicle from about 10 feet. When police came upon defendant's vehicle, he fled. The defendant was apprehended about three weeks later.

Defendant first argues that the evidence was insufficient to support his conviction for assault with intent to murder, specifically arguing that there was insufficient evidence of his intent. We disagree. We review cases involving challenges to the sufficiency of the evidence de novo. The evidence is reviewed in a light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that all the elements of the crime were proved beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

Assault with intent to murder requires a prosecutor to prove the following elements: (1) an assault, (2) with actual intent to kill, (3) which, if successful, would have resulted in a murder. *Id.* at 195-196, quoting *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005). The prosecutor must provide sufficient evidence to prove all elements beyond a reasonable doubt. *Id.* at 196. Circumstantial evidence can be used to prove the elements of a crime beyond a reasonable doubt, *id.*, and a prosecutor need not disprove every possible theory of innocence, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant's actions and statements leading to the offense support a reasonable inference that he possessed the requisite intent to kill. On the night of the offense, defendant argued with two of the victims, cursed at them, brandished a weapon and made direct threats of violence. He then followed the victims' vehicle for several blocks and ultimately fired a lethal weapon at the vehicle from a distance of approximately 10 feet. The bullet struck the frame of the vehicle and lodged itself in the pillar supporting the windshield. One of the victims testified that had the bullet landed 3 inches to the left it likely would have struck the driver. The shot had such a large impact on the vehicle that it "shattered," causing the victims to stop immediately because they were in fear for their lives. These facts support a rational trier of fact finding that the defendant possessed the intent to kill when he fired his weapon.

Defendant next argues that remand is necessary to correct the presentence investigation report (PSIR) and to resentence defendant based on accurate information. We again disagree. We review challenges to the accuracy of information contained in a PSIR for an abuse of discretion. *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008). An abuse of discretion exists when a trial court's decision falls outside the range of principled outcomes. *Id.*

A challenge to the accuracy of information contained in a PSIR can be raised at sentencing, in a motion for resentencing, or in a motion to remand. MCL 769.34(10); *People v Lloyd*, 284 Mich App 703, 706; 774 NW2d 347 (2009). Once a defendant effectively challenges the information contained in a PSIR, the prosecution must prove by a preponderance of the evidence that the facts are as the prosecution claims, and the trial court must then respond to the challenges of the accuracy of the information, MCR 6.425(E)(2); *id.* at 705. However, if a trial court fails to respond to alleged inaccuracies, the failure to resolve the issue can be considered harmless error if the alleged inaccuracies would have no effect on the defendant's sentence. *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1991).

Defendant fails to show that the PSIR contains inaccurate statements about his suspected gang activity that would require correction by the trial court. The PSIR did not inaccurately label defendant as a gang member because it neither confirmed nor denied defendant's involvement in a gang. Rather, the PSIR only stated the "defendant's *suspected* gang affiliation

with the Latin Kings [made] him an incredible threat to society,” and later acknowledged that “defendant continued to deny any gang involvement.” (Emphasis added.) These statements are not inaccurate statements requiring correction by the trial court.

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan